

**BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM**

**PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER**

Thursday, the 7th day of March, 2024

O.P. No. 21 of 2022

Petitioner

: P.P. Eldhose
S/o. Pailey,
Pulparambil House,
Market P.O.,
Muvattupuzha - 686 673

(Chairperson,
Muvattupuzha Municipality)

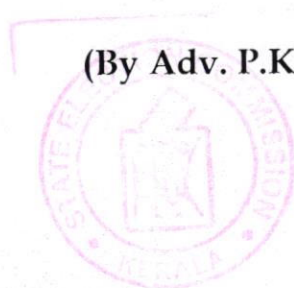
**(By Adv. S. Gopalakrishnan Nair &
Adv. A. Santhosh Kumar)**

Respondent

: Prameela Gireesh Kumar
W/o. Gireesh Kumar,
Kulangaredathu, Randar P.O.,
Muvattupuzha - 686 673.

(Councilor, Ward No.13,
Muvattupuzha Municipality)

(By Adv. P.K. Varghese)



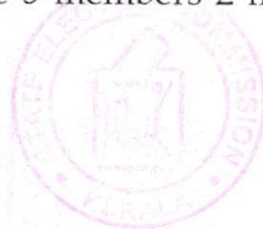
ORDER

This is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 to declare the respondent is disqualified to continue as a Councilor of Muvattupuzha Municipality and further to declare that the respondent is disqualified for a period of six years to contest any election to the Local Self Government Institutions.

2. The Petitioner's case in brief is as below:

Petitioner and respondent are elected councilors of Muvattupuzha Municipality in the general election held in 2020. Both petitioner and respondent were elected as candidates of Indian National Congress (INC) under the symbol "hand" from Ward No.25 and 13 respectively. Petitioner is the Chairperson of Muvattupuzha Municipality and also the leader of Parliamentary party of United Democratic Front (UDF). One P.M. Abdul Salam was also elected as Secretary and Chief whip of the UDF Parliamentary Party. After the election respondent had given a sworn declaration in Form No. 2 as per rule 3 (2) of the Kerala Local Authorities (Prohibition of Defected members) Rules before the Secretary of the Municipality stating her political allegiance as a councilor of INC. On the basis of the declaration, a Register showing party affiliation of respondent was prepared by the Secretary in Form No.1.

3. The welfare standing Committee of the Muvattupuzha Municipality consists of 5 members. Out of these 5 members 2 members belong to



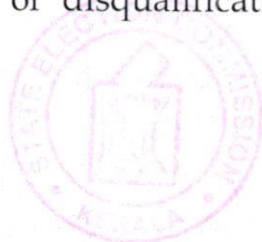
UDF, 2 members belonging to LDF and 1 independent. The respondent Smt. Prameela Girishkumar and Smt. Bindu Jayan, Councilor of Ward No. 20 were the UDF members in the welfare standing committee. In the election to the post of welfare standing committee held after general election Smt. Rajasree Raju, an independent councilor was elected as Chairperson of Welfare Standing Committee with the support of UDF members in the Standing Committee. While she was continuing as Chairperson of Welfare Standing Committee, LDF members in the Standing Committee along with respondent submitted a notice of intention to move no confidence motion against Smt. Rajasree Raju, Chairman of welfare Standing Committee. Accordingly the Authorized Officer issued notice to all the members of welfare standing committee intimating date and time of the meeting as 01.08.2022 at 12 noon.

4. The President of District Congress Committee (I), issued written direction to the members of Welfare Standing Committee belongs to INC(I) to abstain from attending and voting of no confidence motion against the Chairman of Welfare Standing Committee Smt. Rajasree Raju. The said registered whip addressed to the respondent was returned with the endorsement "unclaimed by the Addressee". The copy of the whip was served to the Secretary of the Municipality as provided under rule 4(2) and who acknowledged it's receipt on 30.07.2022 as evident from Exhibit-A7. A Parliamentary Party meeting of UDF members convened on 27.07.2022 decided to entrust the UDF



Chief Whip Sri. Abdul Salam to intimate the stand of UDF to abstain from attending and voting of no confidence motion against the Chairman of Welfare Standing Committee to UDF members of Welfare Standing Committee. Accordingly on 29.07.2022, the Chief Whip along with few party members and councilors went to the residence of the respondent. Though it was served directly she was reluctant to receive the intimation. Therefore the whip was affixed in the premises of the residence of respondent. She was purposefully evaded from accepting the registered whip as well as written intimation of the decision of UDF parliamentary party meeting given by the Chief Whip dated 29.07.2022.

5. In the meeting to consider no confidence motion against Chairman of Welfare Standing Committee Smt. Rajasree Raju held on 01.08.2022 at 12 noon convened by the Authorized Officer, respondent attended the meeting and voted in favour of the no confidence motion against the Chairman, along with LDF members in the standing committee. The respondent disobeyed the written direction issued District Congress Committee as well as Chief whip of UDF Parliamentary party. As a result the Chairman of Welfare Standing Committee supported by UDF is ousted from the position of Chairmanship. The respondent voluntarily abandoned her party membership from Indian National Congress (I) which fielded her as a candidate in the election and thereby she suffers the vices of disqualification on the ground of defection.

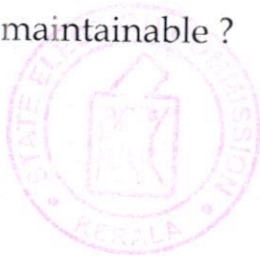


6. The respondent's case is in brief is as below:

The Respondent contended that the petitioner has no *locus standi* to approach Commission and file this petition. The prayers in the petition are not liable to be allowed. The consistent case of the respondent is that she has not received any written direction commonly known as Whip dated 23.07.2022 to abstain from attending and voting of no confidence motion against the Chairman of Welfare Standing Committee. Rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules 2000, the written direction/whip if any, to a person has to be sent by way of registered post along with acknowledgement due. In the present case it is issued to the respondent by way of Speed Post along with Acknowledgement Due. During the period from 25.07.2022 to 04.08.2025 respondent was residing in her matrimonial home located at the fag end of Maaradi Panchayat, which is 7 km from the address shown in the petition. On 25.07.2022 respondent went to her matrimonial home so as to meet the medical needs of her father in law. It is not correct that the whip was unclaimed by the addressee. It seems that postal article was pending in the custody of postal authorities for a period of 6 days. Exhibit-A2 and Exhibit-A3 have no authenticity to conclude that there is deemed service of written communication/official whip to the respondent. No information or intimation received by the respondent regarding the whip.



7. Respondent further states that she was unaware of the Parliamentary Party meeting of Muvattupuzha Municipality convened on 27.07.2022. It is false to state that on 29.07.2022, the Chief Whip along with few party members and councilors went to the residence of the respondent and that she has not received any intimation from them. Respondent has not disobeyed the written direction issued by the President of District Congress Committee and Chief Whip of UDF Parliamentary Party. No written direction issued either by the President of District Congress Committee or by Chief Whip of UDF Parliamentary party. Respondent has not acted against the Party Whip and joined hand with other opponents of UDF to defeat the official direction of the president of District Congress Committee and Chief Whip of Muvattupuzha Municipality. This respondent has not voluntarily abandoned her party membership from Indian National Congress (I). There is no action from the respondent which amounts to defection as provided in the Kerala Local Authorities (Prohibition of Defection) Act, 1999 so as to disqualify her as Councilor.
8. The evidence in this case consists of oral depositions of PW1 to PW6 and RW1 and the Exhibits A1 to A10 and X1 to X3 (series).
9. Heard both sides.
10. The following points are for consideration:
- i) Whether the petition is maintainable ?



ii) Whether the respondent has committed defection as provided by Section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 as alleged?

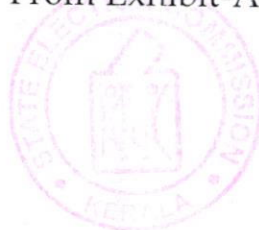
iii) Whether the respondent is liable to be declared as disqualified for a period of six years to contest any election to the LSGIs.

11. Points (i) & (ii) – PW1, the petitioner stated that both the petitioner and respondent were contested and got elected in General Election held in 2020 to the Muvattupuzha Municipality as official candidates of INC with symbol 'Hand'. Respondent after election had given sworn declaration before the Secretary of the Municipality that she has won the election as official candidate of INC and on the basis of the declaration, a Register showing party affiliation of respondent was prepared by the Secretary. There is no dispute that respondent is contested and elected as a candidate of INC, a constituent of UDF. In the meeting of UDF Parliamentary party held on 28.12.2020, the petitioner was elected as Parliamentary party leader and Mr. Abdul Salam was elected as party chief whip. The copy of the minutes of the meeting is produced, marked as Exhibit-A1. It is evident from Exhibit-A1 that respondent was present in the meeting. The respondent and Smt. Bindu Jayan Councilor of Ward No. 20 were elected as UDF members in the Welfare Standing Committee. After general election Smt. Rajasree Raju, an independent councilor was elected as Chairperson of Welfare Standing Committee with the support of UDF members in the Standing Committee. Meanwhile respondent along



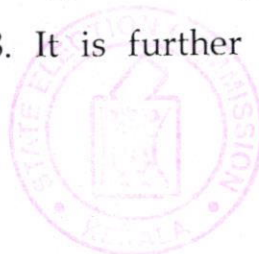
with 2 LDF members in the Welfare Standing Committee submitted a notice of intention to move no confidence motion against Smt. Rajasree Raju, Chairperson of Welfare Standing Committee. The respondent signed the motion of no confidence against Standing Committee Chairperson supported by UDF, along with LDF members. The Authorized Officer issued notice to all the members of welfare standing committee intimating date and time of the meeting to consider the no confidence motion as 01.08.2022 at 12 noon.

12. The District Congress Committee President issued direction in writing to the respondent calling upon her to abstain from the meeting to consider no confidence motion against the Chairman of Welfare Standing Committee Smt. Rajasree Raju. From the Exhibit-A3 postal receipt dated 23.07.2022 it seems that it is addressed to the respondent. The whip was sent to the respondent by registered Speed Post with acknowledgement due on 23.07.2022. But the said postal article was returned to the sender on 03.08.2022 with the postal endorsement "Addressee unclaimed". The returned postal article is marked as Exhibit-A2. It appears from Exhibit-A2 that intimation served to the addressee on 25.07.2022 and 26.07.2022 before returning the postal article containing the whip to the sender. Service of intimation is meant to notify the recipient that the item is available for delivery. But respondent not claimed the item irrespective of service of intimation. Exhibit-A7 is the copy of direction in writing served to the Secretary of Muvattupuzha Municipality. From Exhibit-A7 it seems that the receipt



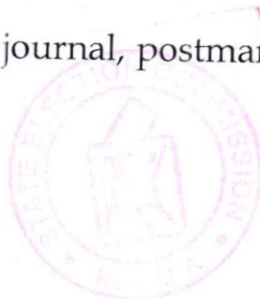
of copy of whip was duly acknowledged by Secretary on 30.07.2022 with his signature and seal.

13. The UDF Parliamentary party meeting held on 27.07.2022 has decided to abstain from the meeting and voting of no confidence motion against Smt. Rajasree Raju scheduled to be held on 01.08.2022. The meeting further authorized party Chief Whip of the Municipality Sri. Abdul Salam to give whip to two INC members in the Standing Committee viz. respondent and Smt. Bindu Jayan. The minutes of the meeting is marked as Exhibit-A4. From the Minutes it seems that respondent was not present in the meeting held on 27.07.2022. As per the decision in the meeting UDF Chief Whip along with others went to the respondent's residence to handover the whip on 29.07.2022, but she refused to receive the whip. Hence the written direction was affixed on the premises of the respondent in the presence of the respondent and witnesses. The copy of the whip affixed on the premises of the respondent is marked as Exhibit-A5 and the mahazar prepared is marked as Exhibit-A6. The photographs taken then and there is marked as Exhibit-A6(A6(a) to A6(g)). The copy of the registered whip was given to the Secretary, Municipality is marked as Exhibit-A7.
14. The respondent defied the whip by attending the meeting held on 01.08.2022 and voted in favour of the no-confidence motion along with the LDF members. The copy of minutes of the meeting proceedings prepared by the Returning Officer to prove the same is produced and marked as Exhibit-A8. It is further seems from the Minutes that



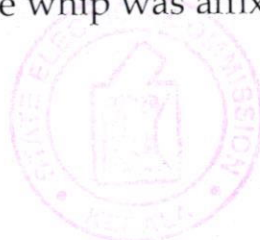
respondent moved no confidence motion against Smt. Rajasree Raju. It is further alleged that the subsequent election to the post of Welfare Standing Committee Chairman held on 20.08.2022, the respondent stood as a candidate of LDF for the post, the LDF members in the standing committee voted in her favour and she emerged successful with the vote of LDF members. In this regard OP 25/2022 filed by the petitioner herein against the respondent is pending before State Election Commission.

15. In the cross examination, petitioner denied the allegation that the photographs produced as Exhibits are being taken subsequently. He has produced the minutes book of the Parliamentary Party Meeting to support the Exhibit-A1 and A4 and marked as Exhibit-A10.
16. PW2, the Secretary of Muvattupuzha Municipality produced the party affiliation register, marked as Exhibit-X1 and respondent's sworn declaration, marked as Exhibit-X2. In both the documents, the respondent signed against her party affiliation showing as a member of INC, a constituent of UDF.
17. PW3, the postman deposed that he has gone to home of Smt. Prameela Gireesh Kumar to give Exhibit-A2 postal article on 25.07.2022. Even though she was at residence, she refused to receive and hence "Intimation served" to her. He went to home of Smt. Prameela Gireesh Kumar again next day, but the door was locked. Therefore postal article was returned with the endorsement 'unclaimed' on 01.08.2022. He has produced copy of BO journal, postman book and office copy of



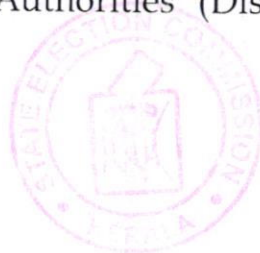
service of intimation, tapal register dated 25.07.2022 and marked as Exhibit-X3 series. He stated that the registered postal article with Acknowledgement can't be given to anybody else than the addressee.

18. PW4, President, District Congress Committee, Ernakulam deposed that he has given direction in writing to the respondent to abstain from the meeting to consider the no-confidence motion against Chairman of Muvattupuzha Municipality welfare standing committee through Municipal Chairman, P.P. Eldhose, petitioner herein. He produced the copy of the whip, which is marked as Exhibit-A9. The whip sent through Municipal Chairman by post received back on 02.08.2022. The copy of the whip also communicated to Municipal Secretary as provided under rule 4(2).
19. PW5, Councilor of ward No. 9 of Muvattupuzha Municipality has deposed that he is elected as UDF Parliamentary Party Chief Whip in a meeting of UDF Councilors on 28.12.2020. He stated that a Parliamentary Party meeting held on 27.07.2022, which decided the UDF Councilor to abstain from the Muvattupuzha Municipal Council meeting on 01.08.2022 proposed to discuss no-confidence motion against the Chairman, Welfare Standing Committee and he was authorized to give whip to UDF Councillors Smt. Bindu Jayan and Smt. Prameela Gireesh Kumar. He deposed that he along with other councilors reached at the home of Smt. Prameela Gireesh Kumar on 29.07.2022 at 6.00 pm to serve the whip, but she was not ready to receive the whip. Hence whip was affixed at her residence. A mahazar

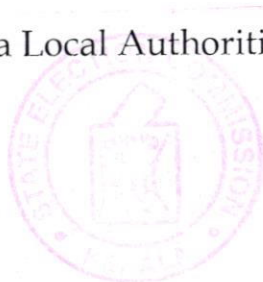


was also prepared at the venue. Photos taken in mobile phone at the same time. The respondent attended the meeting on 01.08.2022 by defying the whip. The copy of the whip also given to the Secretary of Municipality. In the cross examination he said that Councilors Jinu Madakkal and Joyce Mary Antony accompanied him to affix the whip at the residence of the respondent. He has not seen the minutes and other records related to the meeting held on 27.07.2022. He identified and affirmed his signature in the Exhibit-A4 and Exhibit-A5. PW6, deposed that he was a witness of the affixture of whip at the residence of the respondent on 29.07.2022 and signed the copy of the whip and mahazar as seen in the Exhibit-A5 and Exhibit-A6.

20. RW1, the respondent stated that the petitioner has no *locus standi* to file the petition and the petition is not maintainable either in law or on facts. She stated that she and the petitioner are elected to Muvattupuzha Municipality. It is true that the Returning Officer as authorized officer of Election Commission convened a meeting for a no-confidence motion against the Chairman of welfare standing committee on 01.08.2022, 12.00 pm. She has not received any written direction/whip to abstain from the meeting with Registered A/D dated 23.07.2022 as alleged. She said that Exhibit-A2 is issued to her by way of speed post along with A/D, therefore there is no proper service of written direction/whip in the manner indicated under Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected members) Rules, 2000.



21. Respondent has no case that petitioner is not a councilor of Muvattupuzha Municipality and therefore there is no question of *locus standi* of the petitioner arose in the petition. As regards of the question of service of notice through speed post in ITAT, Mumbai in *Color Craft V ITO* held that all the principal attributes of "registered post" were inherently present in "Speed Post", so that that two were of the same genus." Moreover, ordinarily the service through Speed post will take place within few days than registered post. Considering the paucity of time between issuance of notice of no confidence motion and meeting of no confidence motion fixed by statute, it is only reasonable to serve whip through Speed post.
22. The consistent case of the respondent is that she has not received the postal intimations dated 25.07.2022 and 26.07.2022 as she was not in the address shown in the speed post. It is incorrect to say that the whip was unclaimed by her. All the members of her family including respondent were away from residence for a period from 25.07.2022 to 04.09.2022. She was at her matrimonial home, which is seven kilometers away from the address shown in the petition. She was ignorant about the arrangement to be made to receive the postal articles in her absence. She deposed that there is no need to keep the postal article from 25.07.2022 to 01.08.2022 in the custody of postal authorities.
23. However the respondent herein had raised dispute with regard to the existence of whip and the service of the whip by way of affixing at the residence. Rule 4 Kerala Local Authorities (Disqualification of Defected



Members) Rules provides the manner in which a political party or coalition may give 'direction in writing' /whip to its members. It reads as follows:-

"4. The manner in which a Political party or Coalition may give direction to its members: (1) If a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of Section 3, it shall be in writing and such a direction shall be given,-

(i)XXX

[(i) ഒരു രാഷ്ട്രീയ കക്ഷിയിൽപ്പെട്ട അംഗത്തിന്റേയോ അതിലുൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റേയോ കാര്യത്തിൽ പ്രസ്തുത അംഗത്തിന് തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ആ രാഷ്ട്രീയകക്ഷിയുടേതായ ചിഹ്നം ശുപാർശ ചെയ്യുന്നതിന്, അതതു കാലങ്ങളിൽ, രാഷ്ട്രീയകക്ഷി അധികാരപ്പെടുത്തിയിട്ടുള്ള ആൾ ആയിരിക്കേണ്ടതാണ്.

എന്നാൽ, മേൽപ്പറഞ്ഞ നിർദ്ദേശം ആ രാഷ്ട്രീയകക്ഷിയുടെ ലെറ്റർഹെഡിൽ തീയതി വച്ച് ഒപ്പിട്ട് അതിന്റെ മുദ്രയോടുകൂടി ആയിരിക്കേണ്ടതാണ്.]

(ii) In the case of a member who belongs to a coalition or considered to be included in it; by the member whom the members of the said coalition and the members considered to be included in it in the local authority concerned elected for the purpose, on majority basis from among themselves.

[(iii)XXX]

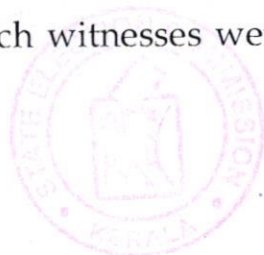
[XXXX]



[(2)] While issuing a direction under sub -rule(1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixing it shall be done in the presence of at least two witnesses.

4[Copy of the direction in writing shall also be given to the Secretary]”.

24. Rule 4 specifically provides that while issuing a direction under sub rule (1) directly the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixture, it shall be done in the presence of at least two witnesses. Moreover the rule mandates to furnish a copy of whip to the Secretary of the Municipality. Evidently, Exhibit-A5 is the copy of the whip issued by the PW4 President, District Congress Committee in tune with the provisions under clause 2 (iva) of Section 2 of the Act. It is to be noted that the competency of PW4 to issue 'direction in writing'/whip by virtue of his position as the President District Congress Committee is not at all disputed by the respondent. PW2 is the Secretary of the Municipality, who received the copy of the whip as per Exhibit A7. PW3, the postman has deposed that he has gone to the home of the respondent to give the Exhibit A2 postal article to the respondent on 25.07.2022. Even though she was at residence, she refused to receive and the cover returned noting "Intimation served". PW1 claimed that the whips were served by affixing in presence of witnesses and apart from the assertions such witnesses were examined as PW5 and PW6.



RW1 has deposed that Exhibit-A2 was issued her by speed post with Acknowledgment due and therefore no service of whip in the manner indicated under Rule 4(2) and she was not in the address shown in the speed post.

25. However, the respondent has no case that the change of her address has been intimated to the Municipality or postal authorities. The Hon'ble High Court in *Praveena Ravikumar V State Election Commission* (Judgment dated 08.12.2023 in WP (C) No. 36155/2023) examined elaborately the scope of service of whip, when the postal article was returned as "unclaimed" as follows:

"The question that arises is whether the unclaimed postal article could be deemed to be a service of notice on the respondents. The postal receipts affixed on the returned postal covers - Exhibit-A6 and Exhibit-A8, show that the articles were posted on 24.12.2021 at 5.09 pm. The endorsement on the postal cover indicates that intimations were given to the addressees on 27.12.2021, and it was not claimed and hence returned to the sender on 08.01.2022. Though respondents contended that Smt. Praveena Ravikumar had shifted her residence to another place, and had intimated the change to the panchayat, during her evidence as RW1, she admitted that it was her own name and address that is mentioned in Exhibit-A4. She also admitted that the alleged address change was not mentioned in her objection and further that Exhibit-X1 was not registered in the inward register of the panchayat or at its front office. Thus, there is nothing conclusive to show that such an alleged change of address was informed to the Panchayat or that the address was changed in the official records.



.....

*Apart from the above, if the notice sent to the correct address is returned either as unclaimed or as addressee left, the failure to serve the notice can only be attributed to the addressee and not to the sender. In such circumstances, the addressee should leave necessary instructions with the postal authorities either to redirect the letter to his new address or authorize a person to receive such postal articles. Failure to provide the new address to the postal authorities cannot prejudice the sender in such circumstances. Reference to the decision in *M/s Madan and Co. v. Wazir Jaiwir Chand* [(1989) 1SCC 264] is relevant.*

.....

Further, under Rule 3(1) of the Kerala Panchayat Raj (Manner of Service of Notices) Rules 1996, service shall be done by serving or by sending notice to such person or leaving such notice at the last known place of abode, if he cannot be found or even by affixing in conspicuous part of his abode. Thus, when a registered letter is addressed to a person's last known address, the very sending itself is sufficient, as per the panchayat rules to be deemed to have served notice."

26. From the above discussion the irresistible conclusion possible is that petitioner has proved that he has served the whip to the respondent through registered post as well as by affixture as provided under rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules.



27. The facts of the case would disclose that the petitioner and the respondent were contested and elected as nominees of INC. The INC has issued a whip directing the respondent to abstain from the meeting to consider no confidence motion against Smt. Rajasree Raju. But in violation of whip respondent attended the meeting for discussing the no confidence motion against the Chairman of Welfare Standing Committee of Muvattupuzhá Municipality held on 01.08.2022 and voted along with LDF members in favour of no confidence motion and as a result the Chairperson supported by her political party was ousted from the position. Respondent acted this by defying the whip issued by her political party which allotted official symbol to her in the election to the Municipality.
28. Apparently this is a case in which the basic issue is whether the respondent has defected by voluntarily giving up her membership of a political party and joined hands with members of rival political party to expel the Chairman of the Welfare Standing Committee supported by UDF in violation of the whip issued by her political party amounts to such a defection as provided under Section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. Section 3(1) (a) reads as follows:-

"3. Disqualification on ground of Defection.- (1) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in



the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act,-

(a) if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting,-

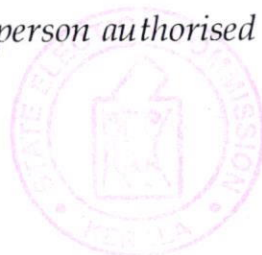
(i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing Committee or the Chairman of a standing committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or in a voting on a no-confidence motion against any one of them except a member of a Standing Committee;

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(2) The direction in writing issued for the purpose of clauses (a) and (b) of Sub-section (1) shall be given to the members concerned in the manner as may be Prescribed and copy of such direction in writing shall be given to the Secretary of the Local Self Government Institution concerned.

(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorised in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorised by the political party from time

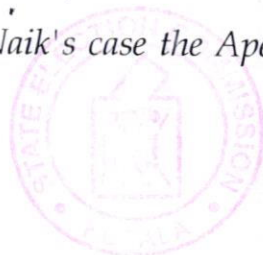


to time to recommend the symbol of the political party concerned for contesting in election shall be deemed to be valid.]

Explanation.- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was [set up or given report] as a candidate for the election".

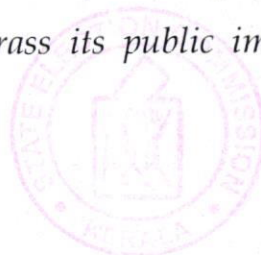
29. The concept 'voluntary giving up the membership' was explained and elucidated in relation to the Act by the Division Bench of Hon'ble High Court of Kerala in *Varghese V.V. and Another v. Kerala State Election Commission and Another* [2009(3)KHC 42 (DB): 2009(3) KLT 1] after considering the issue with reference to the decision of the Hon'ble Apex Court in *Ravi.S.Naik v Union of India* [1994 KHC 633: AIR 1994 SC 1558]. In paragraph 7 the Division Bench held:

*The expression 'defection' as such is not defined in the Act. Probably the expression does not require a definition since the concept is so plain. But the Legislature has left the disqualification to be decided on the defined conduct of the member. We are concerned with the conduct of voluntarily giving up membership in the political party. It is now settled law that in order to attract the disqualification on the ground of voluntary giving up membership in the political party, the elected member need not resign from the party. In *Ravi S. Naik v. Union of India*, AIR 1994 SC 1558 it was held that voluntarily giving up membership is not synonymous with resignation. Voluntary giving up membership has a wider meaning than resignation as observed by a Division Bench of this Court in *Shajahan v. Chathannoor Grama Panchayat*, 2002 (2) KLJ 451. In *Ravi S. Naik's* case the Apex Court made it clear that "Even in*



the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs". In Rajendra Singh Rana v. Swami Prasad Maurya, 2007 (4) SCC 270 also the Supreme Court held that it is the conduct of the elected members that is to be looked into while considering whether an elected member has become disqualified on the ground of defection based on voluntary giving up membership in the political party. In G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly, 1996 (2) SCC 353 the Apex Court held that "the Act of voluntary giving up the membership of the political party may be either express or implied". In Faisal v. Abdulla Kunhi, 2008 (3) KLT 534 a learned Single Judge of this Court has taken the view that the expression "voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by express resignation; it is to be inferred from the conduct of the member. It was also held therein that the relevant date for deciding the question of disqualification is the date on which the member voluntarily gives up the membership".

30. In *Varghese's case* (supra) the Hon'ble Division Bench also observed the decision in *KihotoHollohan v. Zachillhu and Others* reported in 1992 Supp (2) SCC 651 [1992 KHC 694: AIR 1993 SC 412) whereon the principle 'loyalty to the parties is the norm and voting against the party is disloyalty' as stated in Griffith and Ryle on Parliamentary Functions, Practice and Procedure was referred to for holding "any freedom of its members to vote as they please independently of the political party's declared policies will not only 'embarrass its public image and popularity but also



undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay, indeed its very survival". Finally, considering all such aspects and the object of the Act the Hon'ble Division Bench held that if a member or group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. Further it was found that the moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership.

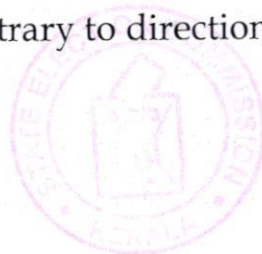
31. Indisputably the respondent herein, who was elected to Muvattupuzha Municipality as an official candidate of INC has moved no confidence motion against Smt. Rajasree Raju, Chairperson of Welfare standing Committee supported by UDF without the knowledge and consent of the INC or UDF and in violation of the whip issued by her political party. Respondent moved the no confidence motion with the support of rival LDF members in the Standing Committee and ousted Smt. Rajasree Raju from the post of Chairman Welfare Standing Committee. The fact that respondent supported the no confidence motion against Smt. Rajasree Raju is not in dispute. The relevant portion of the testimony of respondent, who was examined as RW1 is as follows:

“ഞാൻ നിലവിൽ മൂവാറ്റുപുഴ നഗരസഭയിലെ welfare standing committee chairman ആണ്. Standing committee chairman തിരഞ്ഞെടുപ്പിൽ എന്റെ വോട്ടും കൂടാതെ രണ്ട് LDF അംഗങ്ങളുടെ വോട്ടും ലഭിച്ചാണ് ഞാൻ തിരഞ്ഞെടുക്കപ്പെട്ടത്. തെരഞ്ഞെടുപ്പ്



നടക്കുമ്പോൾ ഞാൻ INC മെമ്പറാണ്. 01.08.2022 ൽ സ്റ്റാന്റിംഗ് കമ്മിറ്റി ചെയർപേഴ്സൺ ആയിരുന്ന രാജശ്രീ രാജുവിനെതിരെയുള്ള അവിശ്വാസപ്രമേയ നോട്ടീസ് ഞാൻ നൽകിയതാണ്. അവിശ്വാസപ്രമേയ നോട്ടീസ് ചർച്ച ചെയ്യുന്ന യോഗത്തിൽ അവിശ്വാസപ്രമേയത്തിന് അനുകൂലമായി ഞാൻ മാത്രമാണ് സംസാരിച്ചത്."

32. The said act of the respondent, also attracted the first limb of Section 3(1)(a). Needless to say, that an action of disloyalty of such nature would amount to voluntarily giving up membership of the particular political party. Therefore the respondent had incurred the disqualification of voluntarily giving up membership in the political party.
33. In *Lissy Valsalan V. Suja Salim and another* (2015 (3) KHC 968) (DB) and *Eruthavoor Chandran and Another V Kerala State Election Commission* (2018 (5) KHC 964) (DB) where the Division Bench of HC held that where a member of political party is aware of the decision taken by the political party, but has failed to act in accordance with the political directive, it would amount to voluntarily abandoning the membership of the political party and he would be disqualified under section 3 (1) of the Act.
34. In *Sandeep M T and Others V Kerala State Election Commission and Others* (2015)(5) KHC 133 the Hon'ble HC examined the scope of voluntarily giving up of membership of a political party and held that " there has to be sufficient evidence to indicate that members have voted in favour of no confidence motion contrary to directions issued by political party



and that it was by colluding or conniving with the members of opposite party “.

35. Consequently, it can very well be concluded that the respondent is quite aware of the decision, but took a different stand from that of her political party; and acted against the policies of the political party in which she was a member. It is nothing but disloyalty. Further, it was found that the moment one becomes disloyal by her conduct to the political party the inevitable inference is that she has voluntarily given up her membership in the political party.

For the aforementioned reasons the O.P. is allowed, and the respondent is declared as disqualified for being Councilor of Muvattupuzha Municipality as provided by section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified from contesting as a candidate in an election to any local authorities for a period of 6 years from this date as provided by the section 4(3) of the Act.

Pronounced before the Commission on the 7th day of March, 2024

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

PW1 : Sri. P.P. Eldhose

PW2 : Sri. M. MuhammedAarif Khan

PW3 : Sri. Sreejith C.L.

PW4 : Sri. Muhammed Shiyas

PW5 : Sri. P.M. Abdul Salam

PW6 : Sri. Akbar C. Bava

Witness examined on the side of the Respondent

RW1 : Smt. Prameela Gireesh Kumar

Documents produced on the side of the Petitioner

A1 : Copy of the minutes of the UDF Parliamentary Party, Muvattupuzha held on 28.12.2020

A2 : Returned Postal Article addressed to Smt. PrameelaGireesh Kumar

A3 : Postal Receipt

A4 : Copy of the minutes of the UDF Parliamentary Party, Muvattupuzha held on 27.07.2022

A5 : Copy of the whip dated 29.07.2022, showing the details of affixture.

A6 : Mahazar

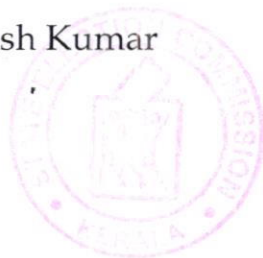


A6(a))
 A6(b))
 A6(c))
 A6(d)) Photograph
 A6(e))
 A6(f))
 A6(g))

- A7 : Copy of the whip dated 23.07.2022 showing the details of Receipt by Secretary, Muvattupuzha Municipality
- A8 : Copy of the minutes of the meeting in connection with the no confidence motion against the Chairperson, Welfare Standing Committee on 01.08.2022
- A9 : Copy of the whip dated 23.07.2022 issued to Smt. PrameelaGireesh Kumar by Sri. Muhammed Shiyas, DCC President, Ernakulam
- A10 : Minutes Book of UDF Parliamentary Party, Muvattupuzha Municipality

Documents produced by Witnesses

- X1 : Register showing the party affiliation of the members of Muvattupuzha Municipality
- X2 : Copy of the declaration in Form No.2 in respect of Smt. PrameelaGireesh Kumar



X3 : Copy of Post Master B.O. Journal

X3(a) : Copy of the relevant page of Postman Book

X3(b) : Copy of the document regarding intimation to addressee

X3(c) : Copy of the relevant page of Tapal Register dated 25.07.2022

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

// True Copy//


B. SURENDRAN PILLAI
Pen No : 101664
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

